

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TROY ANDERSON,  
Plaintiff,

vs.

GLORIA CURCIO, CALIFORNIA  
DEPARTMENT OF CORRECTIONS  
AND REHABILITATION,  
Defendant.

No. C 09-2943 JSW (PR)

**ORDER DISMISSING  
COMPLAINT AND  
DENYING MOTION TO  
PROCEED *IN FORMA*  
*PAUPERIS* AS FILED IN  
ERROR; NO FEE IS DUE**

**(Docket no. 3)**

**INTRODUCTION**

Plaintiff, a prisoner incarcerated at the Solano County Jail, filed a hand-written complaint alleging a deprivation of rights in the United States District Court for the Eastern District of California which was construed as a civil rights action pursuant to 42 U.S.C. § 1983 and transferred to this Court. However, Plaintiff has also filed a nearly identical complaint here, which was filed under Case No. C-09-3310 JSW (PR). It is unclear whether Plaintiff inadvertently filed what appears to be the same claim in two different venues.

In an order issued today, this Court dismissed the earlier case with leave for Plaintiff to file an amended complaint, including all of his claims, on this Court's civil rights complaint form. Therefore, the instant case is DISMISSED as duplicative of Plaintiff's complaint in Case No. C-09-3310 JSW (PR) currently pending before this Court. Plaintiff's application to proceed in forma pauperis is DENIED as filed in error (docket no. 3). Therefore, no fee is due.

## DISCUSSION

### I Standard of Review

Federal courts must engage in a preliminary screening of cases in which prisoners seek redress from a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The Court must identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint "is frivolous, malicious, or fails to state a claim upon which relief may be granted," or "seeks monetary relief from a defendant who is immune from such relief." *Id.* § 1915A(b). Pro se pleadings must be liberally construed, however. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

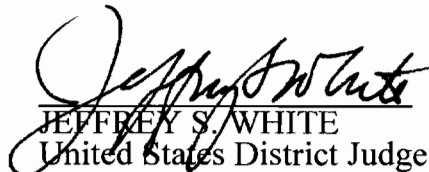
To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988).

### II Duplicative Claims

A complaint that merely repeats pending or previously litigated claims may be dismissed under the authority of 28 U.S.C. § 1915. *Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995); *Bailey v. Johnson*, 846 F.2d 1019, 1021 (5th Cir. 1988). This action is duplicative of another nearly identical complaint filed in the United States District Court for the Eastern District of California and transferred to this Court. That matter is still pending under case number CV-09-3310 JSW (PR). Therefore, the instant action is DISMISSED. The Clerk of Court shall enter judgment and close the file.

IT IS SO ORDERED.

DATED: NOV - 2 2009

  
 JEFFREY S. WHITE  
 United States District Judge